

FILED 08 SEP 25 15:58 USDC-ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	No. CR 08-105-1-JO
)	
v.)	
)	<u>ORDER ON REMAND</u>
FELIX CARRANZA-RIOS,)	
)	
Defendant.)	

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Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

JONES, Judge:

On September 12, 2008, the Ninth Circuit Court of Appeals remanded this criminal case to permit the district court to consider whether it is appropriate to give the defendant-appellant, Felix Carranza-Rios, the benefit of notice and an opportunity to formally request an extension of time for filing his notice of appeal pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure.

Following the entry of a plea of guilty on April 15, 2008, Carranza-Rios was sentenced on June 16, 2008, to a term of fifty-seven months of imprisonment.¹ Therefore, he was incarcerated and proceeding *pro se* on July 14, 2008, when he executed the notice of appeal at issue here. Even giving Carranza-Rios the benefit of the "prison mailbox rule" under Houston v. Lack, 487 U.S. 266 (1988), his filing is outside the ten-day period following the entry of judgment, but falls within thirty calendar days after the expiration of time for filing such notice so that it may be deemed timely if an extension of time is granted. Attached to his notice of appeal is a brief in which Carranza-Rios complains at length about trial counsel's performance, so that it is apparent to this court that there was a breakdown in the attorney-client relationship. However, nothing indicating "excusable neglect" is referenced in either the notice or the brief, and it is not clear from the record whether trial counsel's representation continued beyond the date of the sentencing hearing.


Carranza-Rios has newly appointed counsel to assist him with this appeal, so that he is no longer proceeding *pro se*. I conclude that in the interests of justice, within thirty days of the date of this Order, Carranza-Rios is entitled to file a motion for extension of time to file a notice of

¹The formal Judgment and Commitment Order was entered later, on June 19, 2008.

appeal, in which he may make a showing of excusable neglect or good cause. *See* Fed. R. App. P. 4(b)(4); *see also* United States v. Stolarz, 547 F.2d 108, 111-12 (9th Cir. 1976). "Excusable neglect" may be established if, while proceeding as a *pro se* prisoner, Carranza-Rios can show that he did "'all he could under the circumstances' to perfect an appeal within the time prescribed by the rules." United States v. Houser, 804 F.2d 565, 569 (9th Cir. 1986) (quoting United States v. Avendano-Camacho, 786 F.2d 1392, 1394 (9th Cir. 1986)); *but see* United States v. Prairie Pharmacy, Inc., 921 F.2d 211, 213-14 (9th Cir. 1990) (counsel's mistake does not constitute excusable neglect).

IT IS SO ORDERED.

DATED this 23 day of September, 2008.



ROBERT E. JONES
U.S. District Judge